

One Voice Wales Policy Committee – Briefing Paper 13 December 2019

Local Government and Elections (Wales) Bill

The Bill includes provisions for:

- Reforming electoral arrangements for local government, including:
 - extending the voting franchise to 16 and 17 year olds and foreign citizens legally resident in Wales,
 - changes to voter registration, and
 - enabling a principal council to choose between the ‘first past the post’ or the ‘single transferable vote’ voting systems;
- A general power of competence for principal councils and eligible community councils;
- Reforming public participation in local democracy;
- The leadership of principal councils, including to encourage greater diversity amongst executive members and establishing a statutory position of chief executive;
- The development of a framework and powers to facilitate more consistent and coherent regional working mechanisms;
- A new system for performance and governance based on self-assessment and peer review, including the consolidation of the Welsh Ministers’ support and intervention powers;
- Powers to facilitate voluntary mergers of principal councils and restructuring a principal area;
- Local government finance including non-domestic rating and council tax;
- Miscellaneous provisions relating to:
 - information sharing between regulators,
 - abolition of community polls,
 - fire and rescue authorities,
 - the Local Democracy and Boundary Commission for Wales, and
 - Public Service Boards.

Key extracts

Some provisions in the Bill, particularly the introduction of the general power of competence, will lift some of the restraints that have previously hindered innovation by councils, and will now enable increased ambition for both principal councils and eligible community councils.

Five Year Terms - 3.36 The Bill changes the electoral cycle of principal councils and community councils from four to five-year terms. This would bring local government elections into line with the five-year terms for the UK Parliament (as set in the Fixed Term Parliaments Act 2011) and for the Assembly in GoWA 2006.

Allowing council staff to stand for their own council - 3.59 Officers and staff in principal and community councils generally have a thorough understanding of their communities and a deep commitment to improving their well-being. Many might themselves make effective elected members, but there are restrictions on some officers and employees of a council standing for elections. All council employees and officers (including school staff) can stand for election to another council unless they hold a politically restricted post (generally higher paid officers). However, any paid officers or employees of a council are currently disqualified from standing or being elected members of their employing or appointing council. This means that those council employees and officers need to resign from their job before they announce their candidacy.

The Bill provides that council officers and employees, other than those holding politically restricted posts, will be entitled to stand for election to their own council. They will only be required to resign their paid employment with the council if they are elected. This will widen the pool of potential candidates while ensuring there is no conflict of interest once the candidate is elected.

Disqualification criteria for standing as a councillor - The Bill therefore amends the disqualification provisions in Wales to disqualify individuals, from standing for election, or holding office as a member of a principal council or community council in Wales, if they are subject to a the notification requirements of, or an order under, the Sexual Offences Act 2003.

Piloting of voting arrangements - The provisions in the Bill will enable the Welsh Ministers to direct a Returning Officer, ERO or local authority (where appropriate) to conduct a specific electoral pilot at a local government election. The Welsh Ministers may direct the electoral pilot to take place in a particular area or across the whole authority. Previously the onus was on the Returning Officer, ERO or local authority alone to apply to conduct an electoral pilot.

Returning Officers - The Bill therefore clarifies that Returning Officers can only claim expenses properly incurred in the running of a local government election in Wales. Personal fees in respect of services rendered during the conduct of a local government elections cannot be claimed as they are not “expenses”. It is proposed that the personal fee will also be removed for National Assembly for Wales elections when an order is next made under article 23 of the National Assembly for Wales (Representation of the People) Order 2007 (currently the National Assembly for Wales (Returning Officers’ Charges) Order 2016 is in force).

Part 2 General Power of Competence

No principal council or community and town council can act without legal authority. Activity carried out in the absence of statutory powers would be deemed ultra vires – unlawful.

Responses to previous local government reform consultations in 2015 and 2017 have been consistently supportive of the move towards the general power of competence for principal councils, and for community councils, subject to certain criteria being met.

The 2017 consultation recorded that 75% of the online respondents to the consultation agreed that community councils should be subject to meeting eligibility conditions in return for greater rights and responsibilities. 11 of the 15 principal councils which responded, the Welsh Local Government Association and One Voice Wales were broadly supportive of the introduction of eligibility conditions for community councils.

Purpose and Intended effect of the Provisions

The Bill provides principal councils and eligible community councils (‘qualifying local authorities’) with a general power of competence, with the aim of bringing about more effective, capable and innovative local government.

Specifically in relation to ‘eligible community councils’, the general power will empower this tier of local government, so it is better placed to be part of the Welsh public service in the future and can better contribute to local well-being and community resilience. Access to the general power will enable them to be ambitious and innovative.

Access to meetings - The Bill makes provision for public participation at community council meetings which are open to the public. The provision will give members of the public in attendance a

reasonable opportunity to make representations about any business to be transacted at the meeting.

The Bill also makes provision in relation to notices of principal council and community council meetings. Provision is therefore made to amend the law relating to meetings in order to modernise the rules governing the meetings and proceedings of principal councils and community councils. For example notices of meetings may be published electronically.

Community Council Annual Reports

3.117 An Independent Review on the future of community councils in Wales reported its findings in October 2018. The recommendations included that all community councils should be required to report annually on their work.

3.118 The Bill requires community councils, as soon as reasonably practicable after the end of each financial year, to prepare and publish an annual report about the council's priorities, activities and achievements during that year.

Conduct of members - Training of members and staff of community councils - The Bill therefore requires community councils to consider and address the training needs of members and staff. This can be undertaken in a proportionate way recognising the current variation in the scope of what individual councils are responsible for. The purpose of the provisions is to make community councils and their staff more effective and capable, to improve their administration and governance so that they are better able to perform their responsibilities.

Elections and Elected members - The Bill provides the Welsh Ministers with the power to cancel ordinary elections to merging councils and to extend the terms of office of existing members. This is necessary to avoid staging elections to councils which are about to be abolished. If there are community councils in the areas of the merging councils, the community council elections may also be postponed and re-scheduled to coincide with the first elections to the new council of the newly merged area.

Restraints on transactions and recruitment etc. by merging councils - The LDBCW may undertake such a review of its own initiative or at the request of a local authority (which may be a council of a county or a county borough or a community council). The Welsh Ministers have no powers to direct the LDBCW to carry out a review of a principal council.

Abolition of community polls - The 1972 Act (as amended by the 2011 Measure) provides that a community poll can be held if one is demanded at a properly convened community meeting.

The Bill provides for the abolition of community polls, and implementation of a system of petitions in their place.

3.22 The exception is community governance polls, those which enable a community to hold a poll in respect of a proposal to establish or dissolve a community council or to group with other communities under a common community council.

Local Democracy and Boundary Commission - The Bill also amends section 48 of the 2013 Act to provide a power for the Welsh Ministers to direct the LDBCW not to conduct or stop a review under the 2013 Act. This provision was included in the draft Bill in connection with community council reviews, a proposal which was subsequently dropped. The provision has been retained in the Bill as a useful and sensible extension to the Welsh Ministers powers.

CONSIDERATIONS

Community area committees

Amend

Omit requirement to have Area Committees of the kind expressed in previous provisions. The White Paper seeks views as to whether, for those local authorities which might wish to operate or continue to operate area committees, any changes are required to the current provisions.

Removal of the restriction on having community council meetings in licensed premises

Include

This will enable community councils to hold meetings in licensed premises. There is no longer an intention to propose that community councils adopt standing orders prohibiting the consumption of alcohol at meetings.

Electoral Qualifications – ‘serving on more than one council

Exclude

Consideration of whether an elected member of a principal council should be able to serve on a Community Council, or a community Councillor should be able to serve more than one community council, will form part of the review of the community council sector.

Strengthening Democracy

The Bill will provide the tools needed to strengthen local democracy and equip principal councils with the powers and flexibilities they need to improve outcomes for their communities.

Reducing the voting age so as to include 16 and 17 year olds should increase and maintain engagement with young people; leading to a greater interest in democratic politics.

The Bill seeks to contribute to the creation of a more diverse, representative and transparent local government, which will positively and openly involve all members of the community.

Chapter 10 Cost and benefits of Part 2: General Power of Competence

Community councils would need to demonstrate that they could meet a number of criteria relating to professionalism, good governance and financial controls before being eligible to use the general power. It is considered that providing them with this opportunity will empower them to take a more prominent community leadership role and be more ambitious in responding to local need and opportunity.

Eligible Community Councils

The Bill aims to empower this tier of local government, so it is better placed to be part of the Welsh public service in the future, improving communities. This involves building capacity and capability and strengthening governance. The intention is that community councils, which meet certain criteria specified by legislation, will be deemed 'eligible community councils'.

10.37 Eligible community councils would be able to use the general power of competence, a significant power which will allow them to be more ambitious and innovative.

The proposed conditions are:

- a minimum proportion of councillors on the community council must have been declared elected;
- the community council's clerk must hold relevant qualifications as specified by the Welsh Ministers in regulations; and
- the council's accounts must not have been qualified in the two most recent audit opinions.

Duty to prepare petition schemes and abolition of Community Polls - The abolition of community polls would make public access to petitions quicker and easier which in turn could have a more timely impact on principal council decision-making. It may facilitate additional communication channels to increase interest and involvement in the council's policies, to engage supporters and influence decision making. It would harness the positive social benefits of the internet to bring about more transparent decision-making.

Community Council Annual Reports - It is expected the Welsh Government would incur costs preparing guidance for community councils on preparing their annual report.

Option 2 is the preferred option. This option will result in community councils taking a consistent approach to demonstrating local accountability and could potentially lead to greater engagement and participation with their communities.

Duty of Leaders of Political Groups in relation to Standards of Conduct - Part III of LGA 2000 established a statutory framework to promote and maintain high standards of ethical conduct by members and employees of 'relevant authorities' in Wales. The Act defines a 'relevant authority' as a county or county borough council ('principal councils'), community council, fire and rescue authority or National Park authority.

Community Council Training Plans – requirement

Equality - 19.11 The Bill seeks to create a more diverse, representative, transparent local government, which positively and openly involves all members of the community.

Chapter 21 Post implementation review

With regards to community councils, officials will take stock of the number of councils declaring themselves eligible to use the general power of competence through a survey after the next local government election. This will be a couple of years after issuing guidance to the sector and commencing provisions. Ahead of the survey, we will monitor the uptake of training through the Welsh Government's national bursary scheme for council clerks and evaluate the numbers completing the qualification. In addition, the Society of Local Council Clerks will report progress on the number of qualified clerks to the National Training Advisory Group, which meets quarterly.

21.13 In order to evaluate the effectiveness of the provision to require community councils to publish their training plans, the Welsh Government will monitor these plans through an annual sample of 10% of community council websites, selected at random.